



Council of the  
European Union

Brussels, 18 February 2021  
(OR. en)

6253/21

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**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 05/c/01/21

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 4 January 2021 and registered on 5 January 2021 (Annex 1);
- reply from the General Secretariat of the Council dated 26 January 2021 (Annex 2);
- confirmatory application dated 16 February 2021 and registered on the same day (Annex 3).

**[Email message sent to the General Secretariat of the Council on 4 January 2021 at 17:09 using the electronic form available in the Register application]**

**From:** **DELETED**

**Sent:** Monday, January 4, 2021 5:09 PM

**To:** TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

**Subject:** Consilium - Electronic Request for Access to documents [ENGLISH]

**Family name:** **DELETED**

**First name:** **DELETED**

**E-mail:** **DELETED**

**Occupation :** NGO

**On behalf of** **DELETED**

**Full postal address :** **DELETED**

**Mobile telephone:** **DELETED**

**Requested document(s)**

ST 13301 2020 REV 1 - 02/12/2020 Energy Community Treaty negotiations

ST 13301 2020 INIT - 25/11/2020 Energy Community Treaty negotiations

ST 11859 2020 INIT - 19/10/2020 Amendments to the Energy Community Treaty

ST 12087 2020 INIT - 19/10/2020 Amendments to the Energy Community Treaty

ST 10901 2020 INIT - 18/09/2020 Amendments to the Energy Community Treaty

ST 10902 2020 INIT - 18/09/2020

Amendments to the Energy Community Treaty

ST 10903 2020 INIT - 18/09/2020

Amendments to the Energy Community Treaty



**Council of the European Union**  
General Secretariat  
Directorate-General Communication and Information - COMM  
Directorate Information and Outreach  
Information Services Unit / Transparency  
*Head of Unit*

Brussels, 26 January 2021

Ms **DELETED**  
Email: **DELETED**

Ref. 21/0028-mj/nb

Request made on: 04.01.2021  
Registered on: 05.01.2021

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

I regret to inform you that access to the requested documents cannot be given for the reasons set out below.

The requested documents are classified documents, bearing the classification "RESTREINT UE/EU RESTRICTED". This means that the unauthorised disclosure of their content could be disadvantageous to the interests of the European Union or of one or more of its Member States.<sup>2</sup>

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<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

<sup>2</sup> Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

Documents **10901/20 RESTREINT UE/EU RESTRICTED**, **10902/20 RESTREINT EU/EU RESTRICTED** and **10903/20 RESTREINT UE/EU RESTRICTED** are documents dated 18 September 2020 which concern the amendments to the Energy Community Treaty. Documents **11859/20 RESTREINT UE/EU RESTRICTED** and **12087/20 RESTREINT UE/EU RESTRICTED** are documents dated 19 October 2020 on the same topic.

Document **13301/20 RESTREINT UE/EU RESTRICTED** is a document dated 25 November 2020 which relates to the Energy Community Treaty negotiations. Document **13301/1/20 REV 1 RESTREINT EU/EU RESTRICTED** is a revised version of this document dated 2 December 2020.

All these documents contain information on negotiations which are still under discussion within the Council and at international level.

Disclosure of the information contained in the documents would have a negative impact on the relations of the European Union with the third countries involved in the negotiations. Should its internal views and negotiation strategy be made public while negotiations are still ongoing, the position of the Union in such multilateral negotiations would be seriously weakened. Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the requested documents.<sup>3</sup>

We have also looked into the possibility of releasing parts of the documents.<sup>4</sup> However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access at this stage.

Should you wish to have information about the last Ministerial Council of the Energy Community, you might consult the following link:

[https://ec.europa.eu/info/news/energy-community-treaty-making-it-fit-future-2020-dec-17\\_en](https://ec.europa.eu/info/news/energy-community-treaty-making-it-fit-future-2020-dec-17_en)

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<sup>3</sup> Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

<sup>4</sup> Article 4(6) of Regulation (EC) No 1049/2001.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.<sup>5</sup>

Yours sincerely,

Fernando FLORINDO

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<sup>5</sup> Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[Email sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 16 February 2021 - 10:31]

**From:** DELETED

**Sent:** Tuesday, February 16, 2021 10:31 AM

**To:** TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

**Subject:** Re: Ref. 21/0028-mj/nb

**Ref. 21/0028-mj/nb**

Dear Mr Florindo,

Thank you for your response dated 26 January 2021 to my request dated 04 January 2021. I would like to make a **confirmatory application** for the documents listed below. In my view, the Council has not adequately substantiated why disclosure of the requested documents would undermine international relations.

In the words of the CJEU: The Court of Justice held, in paragraphs 52 and 64 of the judgment of 3 July 2014, *Council v In 't Veld* (C-350/12 P, EU:C:2014:2039), that, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the public interest protected by the exception upon which it is relying. In addition, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (C-612/18 P - ClientEarth v Commission, para. 32).

In view of this, the response provided by the Council was not sufficiently specific and I hereby make a confirmatory application for access to the following documents:

- Document **11859/20 RESTREINT UE/EU RESTRICTED** (ST 11859 2020 INIT - 19/10/2020 Amendments to the Energy Community Treaty)
- Document **12087/20 RESTREINT UE/EU RESTRICTED** (ST 12087 2020 INIT - 19/10/2020 Amendments to the Energy Community Treaty)

- Document **13301/1/20 REV 1 RESTREINT EU/EU RESTRICTED**, dated 2 December 2020, which relates to the Energy Community Treaty negotiations: Any extract from the document which stipulates whether any amendments to the Energy Community Treaty agreed by the Ministerial Council of the Energy Community will need to be ratified by the European Union and by the Parliaments of the Contracting Parties.

Based on the nature of the documents above, I am not convinced that disclosure of the first two documents and the specified part of the third document would undermine the EU's international relations.

The first two documents, in my understanding, make specific proposals for amendments to the Energy Community Treaty. These have already been shared with the other Contracting Parties to the Treaty and discussed at Permanent High Level Group meetings and the Ministerial Council on 17 December 2020. It is therefore not clear how they would undermine the EU's international relations.

The specified part of the third document, should it contain the requested information, also does not in my opinion undermine the EU's international relations, but merely describes whether ratification of any Treaty changes will be needed by the EU and therefore also by the other Contracting Parties. It is to be expected that this information has also been shared with the other Contracting Parties, so again it is not clear where the potential to undermine international relations comes from.

I therefore kindly request you to reconsider the decision not to disclose the documents and look forward to your response.

Kind regards,

**DELETED**

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